# DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

## Clause wise Discussion on the Draft Constitution

**15th November 1948 to 8th January 1949**
**SECTION FOUR**

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**Democracy defined**

Democracy is a form and a method of Government whereby revolutionary changes in the economic and social life of people are brought about without bloodshed.

-from Dr. Ambedkar's address at Poona District Law Library on December 22, 1952.

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**PART IV**



### ARTICLE 22

**Mr. Vice-President** : Amendment No. 645 standing in the name of Dr. Ambedkar. no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view

and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgement, which militate against the acceptance of the view advocated by my friend Mr. Ismail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instructions, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a heterogeneous population believing in different creeds. Suppose for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school

**The Honourable Dr. B. R. Ambedkar**: Sir, I move:

"That in clause (1) of article 22, the words "by the State" he omitted."

The object of this amendment is to remove a possibility of doubt that might arise. If the words " by the State " remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose *of* religious instruction irrespective of the question whether the religious instruction is given by the State or by any other body.

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**Mr. Vice-President** : Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

**Pandit Lakshmi Kanta Maitra** (West Bengal : General) : Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

**Mr. Vice-President** : **I** have already given my ruling. I cannot allow any further speeches, especially as you and I belong to the same Province.

**Pandit Lakshmi Kanta Maitra** : Belonging to the same province has nothing to do with this. I only wanted to have clarification on one point.

**Mr. Vice-President** : My decision is final, Panditji. Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only amendment No. 661 moved by Mr. Kapoor to omit subclause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. If one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties; there would be *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites. Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations ? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

The third flung which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social ; so far as their mutual relations are concerned they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does

not believe in the dogma of Islam is a *Kafir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character of any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgement travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid ; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions.....

**Shri H. V. Kamath** : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils—not a school where all communities are mixed but a school run by the community for its own pupils ?

**The Honourable Dr. B. R. Ambedkar** : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give

religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is barred is this, that the Stale in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

**Pandit Lakshmi Kanta Maitra** : May I put the Honourable Member one question ? There is, for instance, an educational institution wholly managed by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the *Gita* is taught, the *Upanishads* are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22 (1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas,* or *Smrithis,* or *Shastras,* or *Upanishads* comes within the meaning of a religious instruction ? In that case all these institutions will have to be closed down.

**The Honourable Dr. B. R. Amhedkar** : Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

**Pandit Lakshmi Kanta Maitra** : Take for instance the teaching of Gita, Upanishads, the Vedas and livings like that in Government Sanskrit Colleges and schools.

**The Honourable Dr. B. R. Ambedkar** : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Paigambar* the Prophet is the last Prophet and so on, in other words, what we call " dogma ". A dogma is quite different from study.

**Mr. Vice-President** : May I interpose for one minute ? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction; it was regarded as a course in culture.

**Pandit Lakshmi Kanta Maitra** : My point is this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction ? Expounding Upanishads is not a matter of

research.

**Mr. Vice-President** : It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

**Shri H. V. Kamath** : On a point of clarification, (Joes my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory ?

**The Honourable Dr. B. R. Ambedkar** : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

**Prof. Shibban Lal Saksena** : The way in which you have explained the word " religious instruction " should find a place in the Constitution.

**The Honourable Dr. B. R. Ambedkar**: I think the courts will decide when the matter comes up before them.

**Mr. Naziruddin Ahmad** : The Honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

**The Honourable Dr. B. R. Ambedkar** : Well. the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in (he Constitution.

Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of

article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

**Mr. Vice-President** : I am now putting the amendments to vote one after another.

***[In all, 12 amendments were negatived. Only one amendment of Mr. Kapoor as shown below wax accepted by Dr. Ambedkar and was adopted.]***

The question is :

" That clause (3) of article 22 he omitted. "

***[Article 22 as amended wax adopted and added to the Constitution.}***

**ARTICLE 22A (New Article)**

**Prof. K. T. Shah** : Sir, I beg to move:

" That after article 22, the following new article be inserted :—

' 22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished '. "

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**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my Honourable Friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or property of some sort, that is a different matter, but mere dignity cannot be a ground of action it all.

With regard to the amenities which perhaps some of them enjoy, it is certainly within the power of the executive and the legislature to withdraw them. It is quite true, as my Honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown

between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary. ***[The motion of Prof. Shah was negatived.***

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**ARTICLE 23 *(Contd.)***

**Mr. Vice-President** (Dr. H. C. Mookherjee) : We shall now resume discussion of article 23 to which two amendments have been moved. Amendment No. 677 relates to national language and script and is therefore postponed. Amendments Nos. 678, 679, 680 and 681 (1st part) are to be considered together as they are of similar import. I can allow No. 678 to be moved.

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Sir,

I move—-

" That in clause (1) of article 23, for the words " script and culture " the words " script or culture " be substituted. "

The only change is from ' and ' to ' or ' and the necessity of the change is so obvious that I do not think it is necessary for me to say anything regarding the same.

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**Mr. Vice-President** : Amendment No. 679.

**Shri H. V. Kamath** (C.P. & Berar : General) : I have been forestalled by Dr. Ambedkar. So, I do not move No. 679.

**Mr. Vice-President** : Do you wish to press No. 680 ?

**Mohamed Ismail Sahib** (Madras : Muslim) : Yes.

**Mr. Vice-President** : Do you wish that 681 first part should be put to vote ?

**Prof. K. T. Shah** (Bihar : General) : First part is covered by Dr. Ambedkar's amendment. But I would like to move the second part.

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**Shri Jaipal Singh** (Bihar : General) : Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to me this article seems to open a new era for India....

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**Mr. Vice-President :** Dr. Ambedkar.

**Prof. Shibban Lal Saksena** (United Provinces : General) : Sir, I have to say something, and.....

**Mr. Vice-President** : **I** cannot allow the discussion to be prolonged any longer, and my decision is final in this matter.

**Prof. Shihhan Lal Saksena**: To allow some people and not to allow others is not proper.

**Mr. Vice-President** : **I** know it is considered improper. **Dr.** Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass Bhargava. Of the other amendments which have been moved I think there are only two that I need reply to, they are. No. 676 by Mr. Lari and amendment No. 714 also by Mr. Lari. I think it would be desirable, if in the course of my reply I separate the questions which have arisen out of these two amendments.

Amendment No. 676 deals with cultural rights of the minorities, while the other amendment. No. 714, raises the question whether a minority should not have the Fundamental Right embodied in the Constitution for receiving education in the primary stage in the mother tongue.

With regard to the first question, my Friend, Mr. Lari, as well as my Friend, Maulana Hasrat Mohani, both of them, charged the Drafting Committee for having altered the original proposition contained in the Fundamental Right as was passed by this House. It is quite true that the language of paragraph 18 of the Fundamental Rights Committee has been altered by the Drafting Committee, but I have no hesitation in saying that the Drafting Committee in altering the language had sufficient justification.

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental Rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term " minority " was used therein not in the technical sense of the word " minority " as we have been accustomed to use it for the purposes of certain political safeguards such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would he cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of

culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That is the reason why we dropped the word " minority " because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word " minority " in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged. In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution.

I think another thing which has to be home in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution. That is the reason why we eliminated the word " minority " from the original clause.

But while omitting this word " minority " I think my Friend, Mr. Lari forgot to see that we have very greatly improved upon the protection such as was given in the original article as it stood in the Fundamental Rights. The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. The original article had not given any Fundamental Right to these various communities. It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language,

culture and script, the State shall not make any law which may be called oppressive, not that the State had no right-to make a law affecting these matters, but that the law shall not be oppressive. Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed.

My Friend, Mr. Lari and the Maulana will therefore see that there has been from their point of view a greater improvement than what was found in the original article. Certainly there has been no deterioration in the position at all as a result of the change made by the Drafting Committee.

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that the right to receive education in the mother tongue is a Fundamental Right : Let me say one thing and that is that I do not think that there can be any dispute between reasonably-minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure. about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the law or in the Constitution. I must frankly say that I find some difficulty in putting this matter into a specific article of the Constitution. It is true, as my Honourable Friend Pandit Kunzru observed, that the difficulty that might be fell in administering such a Fundamental Right is to some extent mitigated or obviated by the amendment moved by my Friend Mr. Karimuddin *viz.,* that such a principle should become operative in the case a substantial number of such students were available. I would like to draw the attention of my friend Mr. Karimuddin that his amendment does not really solve the difficulty, which stands in the way of his accepting the principle. First, who is to determine what is a substantial number ? Let me give an illustration. Supposing the matter is to be left to the Executive, as it must be, and the Executive made a regulation that unless there were 49 per cent of such children seeking education in a primary school, then and then only it will be regarded as a substantial number. Will that satisfy him if such an authority was left with the Executive ? Then supposing you make this matter a justifiable matter, is it undoubtedly would be when you are introducing it as a Fundamental Right

and no Fundamental Right is fundamental unless it is justifiable, is it proper, is it desirable that the question whether in any particular school a substantial number was available or not should be dragged into a court of law, to be determined by the court ? I cannot see any other way out of the difficulty. Either you must leave the interpretation of the word " substantial " to the Executive or to the judiciary and in my judgement neither of the methods would be a safe method to enable the minority to achieve its object. Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial government can justifiably abrogate it without damage to a considerable part of the population in the matter of its educational rights. Therefore, I submit that the article as amended should be accepted by the House.

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***[Following 3 amendments were adopted. Six amendments were negatived]***

(1) "That in clause (1) of article 23, *for* the words "script and culture" the words " script or culture " be substituted ".

(2) That in clause (3) of article 23. the word " community " wherever it occurs be deleted.

(3) That for clause (2) of article 23, the following be substituted:— " No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds *on* grounds only of religion, race, caste, language or any of them " ; and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A."

***[Article 23, as amended was adopted and added to the Constitution.]***

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**ARTICLE 24**

**Shri T. T. Krishnamachari** (Madras : General) : It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Yes, Sir, I request that article No. 24 be kept back.

**Mr. Vice-President** : Is that the wish of the House ?

**Honourable Members**: Yes.

**Mr. Z. H. Lari** (United Provinces : Muslim) : Then what about article 15, Sir?

**Mr. Vice-President** : The consideration of that article has been postponed for the time being.

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## ARTICLE 25

**The Honourable Dr. B. R. Ambedkar** : Sir, I do not think that because this article is subject to the provisions of the other articles to which my Honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow.....

**Kazi Syed Karimuddin** : Then why not postpone this ?

**The Honourable Dr. B. R. Ambedkar** : No.

**Mr. Vice-President** : I am going .to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

**Mr. Vice-President** : The question is :

" That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution. "

The motion was negatived.

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**Mr. Naziruddin Abrnad** : Perhaps there is some misprint; I do not know. If there is no misprint it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court.....

**The Honourable Dr. B. R. Ambedkar :** See sub-clause (3).

**Mr. Naziruddin Ahmad** : That sub-clause empowers some other specified Courts to deal with this subject ; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court....

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**Shri H. V. Kamath** : ...I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely send or prestige or some such consideration will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

**The Honourable B. R. Ambedkar** : Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

**Mr. Naziruddin Ahmad** : **I** desire to move it if that is acceptable to. the House.

**Mr. Vice-President** : Does the House permit Mr. Naziruddin Ahmad to move this ?

**Honourable Members** : Yes.

**Mr. Naziruddin Ahmad** : Sir, I move:

" That in clause (2) of article 25, for the words ' in the nature of the writs of ' the words ' or writs, including writs in the nature of ' be substituted. " Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the Honourable Member is going to accept it. It requires no explanation.

**Shri H. V. Kamath** : On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

**Mr. Naziruddin Ahmad** : I heard a rumour that it is going to be accepted.

**Mr. Vice-President** : Nos. 791 and 792 are disallowed as verbal amendments. .(Amendment No. 793 was not moved.)

**Mr. Vice-President**: Nos. 794, 795 and 799 are similar and are to be considered, together. 794 is allowed to be moved.

**The Honourable Dr. B. R. Ambedkar** : With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows :

" That for the existing sub-clause (3) of article 25, the following clause be substituted:

' Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2) of this article, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article. ' "

*The* reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

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**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajarnul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajarnul Husain is to delete altogether sub-clause (4) of this article and

Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words ' in case of rebellion or invasion '.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. . Normal peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed ; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir, I will go into details. My Friend Mr. Tajarnul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance—will also disappear. I cannot understand from where my friend Mr. Tajarnul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13 ; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely

outside the provisions contained in article 279.

**Shri H. V. Kamath** : What about article 280 ?

**The Honourable Dr. B. R. Ambedkar**: All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

**Kazi Syed Karimuddin** : Even if war is only threatened ?

**The Honourable Dr. B. R. Ambedkar** : Certainly. An emergency does not merely arise when war has taken place—the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit. Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear.

" The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders in the nature of the writs of..... "

These are quite general and wide terms.

**Shri H. V. Kamath** : On a point *of* explanation. Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus :

" The Supreme Court shall have power to issue directions or orders or writs,

including writs in the nature of *habeas corps,*..... "

**The Honourable Dr. B. R. Ambedkar:** Yes, the words " directions and orders " are there.

**Shri H. V. Kamath :** And " writs ".

**The Honourable Dr. B. R. Ambedkar** : Yes. While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apotogy for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense " prerogative writs ", in the other case they are called " writs in action ". A writ of *mandamus,* a writ of prohibition, a writ of *certiorari,* can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs ; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus,* prohibition or *certiorari* or anything of the "kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceedings

against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpun* proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued in connection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—1 could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas .corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *hobeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of

*mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgement is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the Fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that I prefer the British method of dealing with rights. The British method is a peculiar method a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that make a right real. If there is no remedy, there is no right at all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the .scope of our rights and to make them real by enunciating remedies than to have a tot of piteous wishes embodied in the Constitution. I am very glad that this House has seen that the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

**Shri H. V. Kamath** : On a point of clarification, Sir, as we are dealing with justifiable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that " the rights guaranteed by this article shall not be suspended wholly or in part "..... or any similar set of words which the

legal luminaries may choose '?

**The Honourable Dr. B. R. Ambedkar** : " Shall not be suspended " covers both. It is unnecessary to specify it.

The amendment was negatived.

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**Mr. Vice-President** : The question is :

**Mr. Vice-President** : Amendment No. 787 standing in the name of Mr. Kamath.

**Shri H. V. Kamath** : In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it. The amendment was, by the leave of the Assembly withdrawn. Mr. Vice-President : Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is :

" That in clause (2) of article 25, for the words " in the nature of the writs of the words ' or writs, including writs in the nature of ' he substituted. "

The amendment was adopted.

**Mr. Vice-President** : Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Mahdava Rau and Mr. Saadulla.

The question is :

" That for existing clause (3) of article 25, the following clause he substituted:

' (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article ' ."

The amendment was adopted.

**Mr. Vice-President** : Amendment No. 43 of List I standing in the name of Mr. Sarwate.

**Shri V. S. Sarwate** : I do *not* wish to press it. The amendment was, by leave of the Assembly, withdrawn.

***[Four other amendments were negatived.]***

Article 25, as amended, was adopted and added to the Constitution.

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**ARTICLE 26**

**Mr. Vice-President**: We then come to article 26. The motion before the House is:

That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendments Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move:

" That in article 26 for the words ' guaranteed in ' the words ' conferred by ' be substituted. "

This part does not guarantee but only confers these rights. Therefore

to bring the language in conformity, I propose this amendment.

***[Amendment of Dr. Ambedkar atone was adopted. Article 26 as amended was adopted and added to the Constitution.]***

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**ARTICLE 27**

**Mr. Vice-President** : Amendments Nos. 817 and 818 are to be considered together. 817 may be moved ; it stands in the name of Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move.

" That for clause (a) of article 27 the following he substituted:

' (a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and, ' "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

**Mr. Vice-President** : There is an amendment to this amendment.

**The Honourable Dr. B. R. Ambedkar**: I have moved it as amended.

**Mr. Vice-President** : I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move.

" That for the words ' to provide for such matters and for prescribing punishment for such acts ' the words ' for prescribing punishment for the acts referred to in clause (b) of this article ' be substituted. "

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**Mr. Vice-President** : Amendment Nos. 822 and 823 are of similar import. No. 822 can be moved.

**The Honourable Dr. B. R. Ambedkar** : Sir, I move:

" That for the proviso and explanation to article 27, the following be substituted :

' Provided that any law in force immediately before the commencement of

this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament. '

' *Explanation.*—In this article the expression ' law in force ' has the same meaning as in article 307 of this Constitution '. "

(Amendment Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

**Mr. Vice-President** : The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

**Mr. Vice-President** : I hope you will permit me to get the things through before we disperse in which case, I shall adjourn the House at 1 o'ctock.

**Shri H. V. Kamath** : I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a) ? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article ? .....I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

**The Honourable Dr. B. R. Ambedkar** : **I** am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any Fundamental Right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then that power must be exercised only by the Parliament, so that

there may be uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

**Shri H. V. Kamath** : I am sorry. Sir, that Dr. Ambedkar has not been able to follow me clearly *(Laughter).*

**The Honourable Dr. B. R, Ambedkar** : It is quite possible.

**Mr. Vice-President** : Mr. Kamath, it may be the other way.

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**Shri H. V. Kamath** : **I** am addressing you. Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament atone the power. I do not question this : I agree Parliament and Parliament atone should have the right. You say here Parliament shall have power to make laws with regard to any of the matters. Further on, you say that parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide etc., etc. *Now,* Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words " provide for such matters " and retain only the proviso as regards punishment. What about making laws for such matters ? Why do you delete that portion ? Why do you retain only the part regarding punishment ? That was my point, but Dr. Ambedkar has answered a different point.

**The Honourable Dr. B. R. Ambedkar**: The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

**Mr. Vice-President** : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

***[Amendments Nos. 817, 820 and 822 moved by Dr. Ambedkar were adopted. Article 27, as amended was adopted and added to the Constitution.]***

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## ARTICLE 27A

**Mr. Vice-President** : **I** am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige Honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

**Shri Toknath Misra** (Orissa : General) : But many points have been left untouched.

**Mr. Vice-President** : Dr. Ambedkar.

**The Honourable Dr. B. R. Ambedkar** : (Bombay : General) : Mr. Vice-President, Sir, this matter, as Honourable Members will recall, was debated at great length when we discussed one of the articles in the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States ; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, of the U. K. In the U.K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the

legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of Legislature receive direct guidance and initiative from the Members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great toss that is likely to occur if we do not adopt the American method of separating the Executive from the Legislature.

With regard to the question of separating the Executive from the judiciary, as I said, there is no difference of opinion and that proposition, in my judgement, does not depend at all on the question whether we have a presidential form of government or a parliamentary form of government, because even under the parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

***[Prof. Shaha's amendment was negatived.]***

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## ARTICLE 41

**Mr. Vice-President** : You need not give the reasons for Dr. Ambedkar's action.

**Shri H. V. Kamath** : I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word ' Rashtrapati ' from the article as it appears in the Draft Constitution.

**The Honourable Dr. B. R. Ambedkar** : Mr: Vice-Ptesident, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made

by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word " Rashtrapati " which is included in the brackets after the word President, in paragraph I of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word " Rashtrapati " or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the Constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word " Rashtrapati " to be adopted by the members of those committees, as the word " Rashtrapati " was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term " Rashtrapati " has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word " Rashtrapati " is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says :—

"HIND KA EK PRESIDENT HOGA ....."

The word " Rashtrapati " is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is w]ckd (PRADHAN). There is no " Rashtrapati " there either.

**Shri H. V. Kamath** : But, Sir, the point I raised was that the article as adopted by this House had word " Rashtrapati " incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

**The Honourable Dr. B. R. Ambedkar**: And I am just now informed that in the Urdu Draft, the word used is " Sardar " *(Laughter).*

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word " Chief Executive and the

Head of the State ". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the parliamentary form of government. In the United States undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers ? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

**Mr. Vice-President** : I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name *of* Prof. K. T. Shah.

The motion was negatived.

Article 41 was adopted and added to the Constitution.

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## ARTICLE 42

**Shri Alladi Krishnaswami** Ayyar (Madras : General) : Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions....

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...An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feud or conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions, it is necessary that there should be a close union between the Legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government, the Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential system but also to the way in which America lies built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

**The Honourable Dr. B. R. Ambedkar :** I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswamy Ayyar have said.

**Mr. Vice-Presient** : **I** am putting the amendments one by one to vote.

All 5 amendments were negatived.

***[Article 42 wax added to the Constitution.]***

## ARTICLE 43

**Mr. Vice-President** : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it. Dr. Ambedkar ?

**The Honourable Dr. B. R. Ambedkar** (Bombay : General) : Yes, Sir.

**Mr. Vice-President** : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the Honourable Member is not in the House.

I disallow, as merely verbal, amendments Nos. 1065 and 1066.

**Shri S. Nagappa** (Madras : General) : I do not move amendment No. 1069, Sir.

**The Honourable Dr. B. R. Ambedkar**: Mr. Vice-President, I move :

" That to article 43 the following explanation be added :—

" Explanation.—In this and the next succeeding article, the expression " the Legislature of a State " means, where the Legislature is bi-cameral, the Lower House of the Legislature '. "

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Member of the Upper Chamber to participate in the election of the President. That is not our intention.

We desire that only Members *who* are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

**Mr. Vice-President** : Mr. Mohd. Tahir may now move his amendment No. 23 to this amendment.

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**The Honourable Dr. B. R. Ambedkar** : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgement, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228, 163, 637. The total population of the States comes to 88, 808, 434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise,

the population that would be entitled to take part in the election of the President would be about 50 per cent of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—1 speak subject to correction,—is about 75 millions. I think if Honourable Members will bear in mind the figure which I have given ; namely, 158.5 million, they would realise the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgement forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions to come to the polls and to record the voting ? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery therefore, will have to be entirely supplied from the Government administrative machinery. Is it possible either for the Government of India or for the State Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part ? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormousness of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union ? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the

fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses. I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgement, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The Tower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Tower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

**Mr. Vice-President** : **I** shall now put the amendments to vote, one by one....

In all 5 amendments were negatived.

Following amendments were adopted:—

" That in clause (a) of article 43, for the words ' the members ' the words ' the elected members ' be substituted.

" Amendment No. 1070 standing in the name of Dr. Ambedkar.

" That to article 43, the following explanation be added:— "

Explanation.—In this and the next succeeding article, the expression " the Legislature of a State " means, where the Legislature is bi-cameral, the Lower House of he Legislature."

Article 43, as amended, was adopted and added to the Constitution.

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Contents PART V